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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review on Brake Rotors from the People's Republic of China – April 1, 2000, through March 31, 2001

Summary

We have analyzed the comments of the interested parties in the 2000-2001 administrative review of the antidumping duty order covering brake rotors from the People's Republic of China ("PRC"). We have also considered the use of additional publicly available information since the preliminary results of this review. As a result, we have made one change in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments by parties:

Issue 1: Whether the Sampling Technique and Method Used for Collecting Data in this Review Violated the Petitioners' Rights of Due Process
Issue 2: Whether to Reverse the Preliminary Results With Respect to the Exporter/Producer Combinations
Issue 3: Whether the Exporter/Producer Combinations Excluded from the Order Violated the Exclusion Conditions Based on Examination of Selected U.S. Brake Rotor Entries during the Period of Review
Issue 4: Whether Two Companies Failed the Verification Process Based on the Verification Findings and Documents Obtained From Verification
Issue 5: Whether Certain Data Obtained from Verification Were Illegible
Issue 6: Whether the Change in Ownership Warrants Assigning Laizhou Luyuan the PRC-Wide Rate
Issue 7: Whether We Should Have Conducted Verification of Gren's Data

Background

On January 4, 2002, the Department of Commerce ("the Department") published the preliminary results and partial rescission of the fourth administrative review of the antidumping duty order on brake rotors from the PRC. See Brake Rotors from the People's Republic of China: Preliminary Results, Preliminary Partial Rescission, and Postponement of Final Results of the Fourth Antidumping Duty Administrative Review, 67 FR 557 (January 4, 2002) (Preliminary Results).

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The period of review ("POR") is April 1, 2000, through March 31, 2001. We invited parties to comment on our preliminary results of review. On January 14, 2002, the petitioner[1] requested the Department to reconsider its decision not to conduct verification of Qingdao Gren (Group) Co. ("Gren") (i.e., one of the respondents[2] in this case). On January 24, 2002, we informed the petitioner's counsel that it would not be possible to conduct verification of Gren's submitted data in this review. On March 2, 2002, the Department provided a verification outline to the respondents[3] selected for verification. On March 7, 2002, the petitioner provided verification comments. From March 14 through April 2, 2002, the Department conducted verification. On April 16, 2002, the Department placed on the record certain publicly available information for consideration in the final results. On April 26, and May 2, 2002, the Department issued its verification reports. The petitioner submitted its case brief on June 14, 2002. The respondents collectively submitted their rebuttal brief on June 21, 2002. There was no request for a hearing in this segment of the proceeding.

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[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The respondents in this review are Qingdao Gren (Group) Co. ("Gren") and the following exporters/producer combinations (which are excluded from the order on brake rotors only with respect to brake rotors sold through those combinations): (1) China National Automobile Industry Import & Export Corporation ("CAIEC") or Laizhou CAPCO Machinery Co., Ltd. ("Laizhou CAPCO")/Laizhou CAPCO; (2) Shenyang Honbase Machinery Co., Ltd. ("Shenyang Honbase") or Laizhou Luyuan Automobile Fittings Co., Ltd. ("Laizhou Luyuan")/Shenyang Honbase or Laizhou Luyuan; and (3) China National Machinery and Equipment Import & Export (Xinjiang) Co., Ltd. ("Xinjiang")/Zibo Botai Manufacturing Co., Ltd. ("Zibo").

[3] As stated in the Preliminary Results at 67 FR 558, we selected for verification CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan, and a company affiliated with Laizhou Luyuan.

Margin Calculations

We calculated export price and normal value using the same methodology stated in the preliminary results, except as follows:

1. To value selling, general, and administrative expenses, factory overhead and profit, we used the 1998 financial data of Jayaswals Neco Limited, the 1998-1999 financial data of Rico Auto Industries Limited, and the 2000-2001 financial data of Kalyani Brakes Limited.

2. We used the updated value from the International Trade Administration website to value skilled, unskilled and packing labor.

Discussion of the Issues

Comment 1: Whether the Sampling Technique and Method Used for Collecting Data in this Review Violated the Petitioner's Rights of Due Process

Pursuant to 19 CFR 351.213(d)(3), we preliminarily rescinded this review with respect to the five exporting companies in the three exporter/producer combinations noted above because we had no evidence on the record which indicated that these companies made shipments of subject merchandise to the United States during the POR. To reach that preliminary determination, we conducted a query of the U.S. Customs Service ("Customs Service") database and selected five entries for each of the five exporters included in the exporter/producer combinations (e.g., a total of 25 entries) from the results of the query for further examination. We then requested the Customs Service to either indicate in writing or provide us with the documentation which would enable us to determine who the manufacturer was for each of those entries. (See Preliminary Results at 558.)

The petitioner objects to the Department's query method described above on the grounds that the Department did not explain the type of data query it was conducting nor how it selected the 25 entries. Moreover, the petitioner objects to the fact that the Department did not provide it with all of the entries that resulted from the data query so that it would be able to provide comments on that data (i.e., which entries to select, how many to select, etc.). Consequently, the petitioner argues that its rights of due process have been violated. Specifically, the petitioner contends that the Department violated procedural due process and its statutory obligation under section 782 of the Act (19 USC 1677m(g)) to give parties an opportunity to comment on information when: (1) it failed to make available to the petitioner its data query; (2) it failed to explain the source of the data query; (3) it failed to explain the methodology for selecting which entries should be further investigated by the Customs Service; and (4) it failed to give an opportunity for parties to comment on the data query results and on the selection of the entries to be further investigated before requesting the Customs Service's assistance. In support of its argument, the petitioner cites Nippon Steel Corp. v. United States,118 F. Supp. 2d 1366, 1371-1373 (CIT 2000) ("Nippon Steel") and Wieland-Werke AG, Langenberg Kupfer v. United States, 4 F. Supp. 2d 1207 (CIT

1998) ("Wieland-Werke"). For the above-mentioned reasons, the petitioner asserts that the Department should allow the parties to comment on the data query and, if necessary, should extend the final results of the fourth administrative review to permit all entries from the exporters included in the exporter/producer combinations at issue to be reviewed and verified.

The respondents maintain that the Department's sampling method in this case is consistent with precedent and is not in violation of any due process requirements as alleged by the petitioner. The respondents emphasize that the very fact that the petitioner was able to submit its case brief demonstrates that the petitioner was afforded an opportunity to comment on the Department's methodology for selecting entries from the Customs Service database. Therefore, according to the respondents, the petitioner's argument is without merit. The respondents further maintain that the facts in the instant case are not analogous to those made in the cases cited by the petitioner.

Department's Position:

We disagree that we have violated any due process requirements in rescinding this review with respect to the five exporters in question.

In order to substantiate the claims of the exporters in the three excluded exporter/producer combinations that they made no shipments of subject merchandise during the POR, the Department conducted a data query on October 1, 2001, of brake rotor entries made during the POR from all exporters named in the excluded exporter/producer combinations. The results of the data query provided a voluminous number of entries associated with the excluded exporter/producer combinations. In many of those instances, the manufacturer name resulting from the query was not the actual manufacturer since the term "manufacturer" could indicate one of several manufacturers pertaining to a portion of the merchandise included in the entry. Under these circumstances and as was the case in the prior review conducted of these same respondents, the Department realized that it would be extremely burdensome for the Customs Service to check at each of its ports every 7501 form filed for all the entries resulting from the query. Therefore, consistent with its normal practice and the method used in the prior review, the Department also deemed it appropriate in this instance to select a random sample of the entries provided by the query to determine whether each exporter/producer combination at issue was in compliance with the terms of its exclusion status. The Department's discretion for using sampling techniques in situations where the information to be checked is voluminous has been upheld in previous cases by the Court of International Trade ("CIT") (see Federal-Mogul Corp. v. United States, 20 CIT 234, 918 F. Supp. 386, 403-404 (CIT 1996) ("Federal-Mogul Corp. v. United States")). See also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001 ("Brake Rotors Third Administrative Review") and accompanying decision memorandum at Comment 1.

Accordingly, as a result of the data query on October 1, 2001, the Department requested that the

Customs Service confirm the actual manufacturer for specific entries associated with the excluded exporter/producer combinations.[4] As a representative sample of the entries resulting from the query, the Department selected five entries associated with each of the five exporters included in each of the three exporter/producer combination. In addition, the Department selected entries for each exporter/producer combination which were made at different U.S. ports in order to widen the coverage of the sample (see October 2, 2002, memorandum cited in footnote 4 below). The parties to this proceeding were provided a copy of the October 2, 2002, memorandum to the Customs Service requesting further assistance at the time of issuance.

At no point prior to the filing of its case brief did the petitioner raise an objection to the Department's use of a sampling method in this review. Furthermore, the cases cited by the petitioner to support its due process arguments in this review (i.e., Nippon Steel and Wieland-Werke) are the same ones it cited in the third administrative review of brake rotors from the PRC on the same topic and continue to be without merit (see Brake Rotors Third Administrative Review and accompanying decision memorandum at Comment 1).

As stated in the Brake Rotors Third Administrative Review, Nippon Steel and Wieland-Werke are not analogous with the facts in this review. In Nippon Steel, the CIT ruled that the Department violated the statute and due process when the Department failed to place memoranda discussing *ex parte* meetings between the Department and the petitioner on the record until "on or about the day of the final determination" and thereby denied the respondents an opportunity to examine and comment on the factual data contained in the memoranda before the final decision-making was complete. Similarly, in Wieland-Werke, the Department obtained factual information after the record had closed and used such information in its decision-making for the final determination without allowing the parties to comment on it. In this case, the Department placed on the record all memoranda supporting its preliminary rescission decision two months prior to the preliminary results and all parties to the proceeding had an opportunity to comment on these preliminary results, as is evidenced by the petitioner's submission of its case brief on June 14, 2002, and the respondents' submission of their rebuttal brief on June 21, 2002. In fact, in this case, the petitioner had an opportunity to file comments on our data query results prior to the Department's preliminary determination, but failed to avail itself of that opportunity. Therefore, the Department has fulfilled its statutory obligation and has not violated any due process requirements.

Accordingly, there is no reason to allow the parties additional time to comment on the data query. Moreover, at verification, we examined the entries we selected from the data query results for four of the five exporters and traced additional shipments made by these exporters to entry numbers in the Customs Service database, thereby widening the scope of our original inquiry (see

[4] See October 2, 2001, memorandum from Brian Smith, Team Leader, to Juana Kundak, U.S. Customs Service, titled, "Request for Assistance: Shipments of Brake Rotors from the People's Republic of China Manufactured and/or Exported By Five PRC Companies During the Period April 1, 2000, Through March 31, 2001") ("October 2, 2002, memorandum").

page nine of the April 26, 2002, Laizhou CAPCO verification report; pages nine and ten of the April 26, 2002, Laizhou Luyuan verification report; page eight of the May 2, 2002, Shenyang Honbase verification report; and page seven and eight of the May 2, 2002 CAIEC verification report). In addition, the Department re-examined specific entries which the petitioner maintains represent instances in which the named exporter/producer combination violated the terms of its exclusion status (see Comment 3 below for further discussion). As a result, we found no instances where any of the exporters included in the exporter/producer combinations made sales of subject merchandise to the United States during the POR.

Comment 2: Whether to Reverse the Preliminary Results With Respect to the Exporter/Producer Combinations

We preliminarily rescinded this review with respect to the five exporters in the exporter/producer combinations mentioned above based on the data we received from the Customs Service prior to making that determination. At that time, we had only received from the Customs Service data for seven of the 25 entries. Because the data for those seven entries confirmed who the manufacturer was and did not indicate that any of the exporters included in the exporter/producer combinations were shipping subject merchandise to the U.S. market during the POR, we considered this data to be sufficient for reaching our preliminary results. (See Preliminary Results at 559.)

The petitioner argues that the Department's preliminary decision to rescind the review with respect to the companies at issue should be reversed because (1) the Department did not have substantial evidence on the record prior to the preliminary results to make its decision since it only had information on seven of the 25 entries selected from its query of the Customs Service database; (2) it failed to demonstrate that the sampling method it used to select its 25 entries was a generally recognized technique; and (3) it failed to demonstrate that the technique it employed provided representative results.

The respondents maintain that the information the Department received from the Customs Service on the 25 entries at issue and the documentation it examined for those entries at the companies it selected for verification demonstrate that the Department's preliminary determination to rescind this review with respect to those companies was proper.

Department's Position:

We disagree that we should reverse our preliminary rescission decision. Although we had received only limited information (i.e., data on seven of the 25 entries requested from the Customs Service) for purposes of making our preliminary results, we had no evidence on the record at the time and continue to have no evidence that would warrant making an adverse inference with respect to the remaining 17 entries. In making our preliminary results, we relied on the information we had received from the Customs Service at that time. Because none of that information provided us with a sufficient basis for not preliminarily rescinding this review with

respect to exporter/producer combinations, we partially rescinded this review.[5] Since the preliminary results, we received all available data for the other 17 entries from the Customs Service[6] and conducted verification of those selected entries for four of the five exporters included in the exporter/producer combinations. After a review of the data on this record, we continue to find a sufficient basis to rescind this review with respect to the exporters in the excluded exporter/producer combinations.

As for the petitioner's claim that we failed to demonstrate that the sampling method we used for selecting 25 entries from the Customs Service database was a generally recognized technique, we find the petitioner's claim is without merit for the reasons stated in our position to Comment 1 above. We also disagree with the petitioner's claim that the technique we used did not provide representative results. In order to ensure that the entries we selected from the Customs Service database for further examination were representative, we randomly selected five entries for each exporter. As indicated in our selections, we further ensured that our selections were representative by selecting entries for each exporter from different U.S. ports. Finally, as noted in Comment 1, the Department's discretion for using sampling techniques when necessary has been upheld in previous cases by the CIT (see Federal-Mogul Corp. v. United States and also Brake Rotors Third Administrative Review with accompanying decision memorandum at Comment 1).

Comment 3: Whether the Exporter/Producer Combinations Excluded from the Order Violated the Exclusion Conditions Based on Examination of Selected U.S. Brake Rotor Entries during the Period of Review

The petitioner maintains that the Department's memoranda[7] regarding the results of its data query demonstrate that there are inconsistencies between the original information obtained by the Department and that subsequently obtained from the Customs Service with respect to certain

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[5] See December 31, 2001, Memorandum from Brian C. Smith, Team Leader, to the File, entitled, "Results of Request for Assistance from the U.S. Customs Service to Further Examine U.S. Entries Made by Exporter/Producer Combinations - Preliminary Results.") ("December 31, 2001, memorandum").

[6] See February 21, 2002, Memorandum from Brian C. Smith, Team Leader, to the File, entitled, "Information Provided by the U.S. Customs Service with Respect to Certain U.S. Entries Made by Exporter/Producer Combinations Since the Preliminary Results.") ("February 21, 2002, memorandum"); and March 7, 2002, Memorandum from Brian C. Smith, Team Leader, to the File, entitled, "Additional Information Provided by the U.S. Customs Service with Respect to Two U.S. Entries Made by Shenyang Honbase Machinery Co., Ltd. ("Shenyang Honbase") Since the Preliminary Results.") ("March 7, 2002, memorandum")

[7] See December 31, 2001, memorandum, February 21, 2002, memorandum, and March 7, 2002, memorandum.

entries from the exporter/producer combinations selected for further review. The petitioner asserts that there is a very high level of discrepancy in the names of the exporters and manufacturers identified as associated with these entries, as almost 25 percent of the entries selected for review (i.e., six of the 25 entries) contain contradictory information, and in some instances appear to violate the exporter/producer combinations currently excluded from the order. While the petitioner concedes that the discrepancies found do not always result in a violation of the exporter/producer combinations, the petitioner asserts that they clearly cast doubt on the reliability and credibility of the respondents' non-shipment claims in this review and the reliability of the investigation itself. Consequently, the petitioner strongly objects to the Department's preliminary determination to rescind this review with respect to the exporter/producer combinations. Furthermore, the petitioner requests that the Department investigate further the discrepancies it enumerated in its case brief. Finally, the petitioner contends that the exporters included in the excluded exporter/producer combinations that have violated the terms of their exclusion should be denied the benefit of exporting under these exclusion conditions and should instead be subject to the PRC-wide rate. If the Department does not have the time or resources to further investigate the entries with discrepancies, then the petitioner urges the Department to resort to adverse facts available.

The respondents maintain that the Customs Service data reviewed by the Department support the Department's decision to rescind this review and support the Department's conclusion that there were no violations by the exporter/producer combinations. The respondents claim that certain discrepancies in the Customs Service data noted by the petitioner appear to be clerical errors. Furthermore, the respondents point out that the Department has broad discretion for determining whether entries during the POR comply with the exclusion requirements, and that there is no evidence that the Department has abused its discretion in this case.

Department's Position:

We disagree that the application of adverse facts available is warranted in this case. As a result of the petitioner's comments, we have re-examined the data acquired from the Customs Service on all six entries which the petitioner is claiming represent instances in which the named exporter/producer combination excluded from the antidumping duty order violated the conditions under which it was excluded. Based on our re-examination of the data and verification findings, as explained in detail in a October 21, 2002, Department memorandum cited below, we continue to find no evidence that any of the six entries in question represent instances in which the exporter/producer combinations violated the conditions under which their entries are excluded from the antidumping duty order. Specifically, five of the six entries in question involved situations in which (1) entries had been inadvertently designated in the Customs database as entries attributable to certain exporter/producer combinations when in fact those entries were made by other PRC exporting companies which had their own separate antidumping duty rate; (2) the Customs Service database listed the manufacturer rather than the exporter of the merchandise included in the entry but subsequent review of source documentation established the identity of the manufacturer and demonstrated that there was no violation of the exclusion terms

of the exporter/producer combination at issue; or (3) the manufacturer could not be determined from the data provided by the Customs Service but we had no evidence to suggest that the exporter had violated its exclusion status based on record information for other entries during the POR involving this exporter. The remaining entry involved a situation where the excluded exporter/producer named in the entry documentation did not actually produce or export to the U.S. market the merchandise included in that entry. (For details of the Department's findings with respect to the entries at issue, see Memorandum dated October 21, 2002, from Brian C. Smith, Team Leader, to the File, titled, "Clarification of Six U.S. Entries Made By Exporter/Producer Combinations Included in the Department's October 2, 2001, Request for Further Information from the U.S. Customs Service on Selected Brake Rotor Entries During the Period of Review.")

Therefore, based on the record of this review, we cannot conclude that any of the exporter/producer combinations subject to review have violated the conditions under which they are currently excluded from the antidumping duty order on brake rotors from the PRC. Accordingly, consistent with our position in Comment 1 above, we are rescinding this administrative review with respect to all five exporters in the excluded exporter/producer combinations.

Comment 4: Whether Two Companies Failed the Verification Process Based on the Verification Findings and Documents Obtained From Verification

The petitioner argues that in its verification reports for two companies, the Department noted discrepancies but failed to: elaborate on the nature of those discrepancies, identify how many discrepancies arose, or explain what information was in error or in question. Specifically, the petitioner maintains that the insufficient detail and explanation the Department provided with regard to the discrepancies mentioned in the verification reports for Laizhou Luyuan and Shenyang Honbase impede its ability to evaluate the completeness and accuracy of the Department's verification of these two companies. Therefore, the petitioner alleges that since information is lacking in these two companies' verification reports with respect to apparent discrepancies found by the Department at verification, the Department should conclude that these two companies' data are unreliable and resort to facts available.

The two respondents in question, Laizhou Luyuan and Shenyang Honbase, argue that their verification reports do not indicate any significant errors in either company's data and that the Department did not in fact find any discrepancies. More importantly, the respondents maintain that the specific pages in the verification reports cited by the petitioner where the Department indicated that it found discrepancies are in fact inadvertent typographical errors. The respondents contend that a review of the verification procedures discussed in both verification reports and an examination of the cited verification exhibits in those reports demonstrate that in fact there are no discrepancies with respect to the relevant issues.

Department's Position:

We disagree that the application of facts available is warranted with respect to Laizhou Luyuan and Shenyang Honbase. After conducting completeness tests of both Laizhou Luyuan's and Shenyang Honbase's production data, we inadvertently stated in both companies' verification reports that we found discrepancies. In both instances, the verification exhibits we collected from both companies' verification with respect to their production data clearly demonstrate that there were no discrepancies as a result of conducting comprehensive and thorough completeness tests. Rather, the pages cited by the petitioner in both companies' verification reports contain typographical errors[8]. Hence, the petitioner's claim that we found unexplained and/or unresolved discrepancies after examining both companies' production data is without merit.

Comment 5: Whether Certain Data Obtained From Verification Were Illegible

The petitioner argues that the respondents failed to provide it with legible and/or fully translated copies of over 50 pages contained in verification exhibits[9] collected by the Department. As a result, the petitioner claims that it has been deprived of the opportunity to examine and provide comments on specific pages contained in those verification exhibits and thus has been limited in its ability to participate in the verification process. Therefore, the petitioner requests that the Department instruct the respondents to provide the petitioner with legible and translated copies of certain pages contained in the verification exhibits which are cited in its case brief.

The respondents argue that the Department should reject the petitioner's argument concerning the legibility of the verification exhibits because it is without merit and was not raised in a timely manner. The respondents maintain that they answered the Department's questions regarding the documents and that the Department reviewed the original source documents as kept in the normal course of business. The respondents further maintain that during verification the Department compiled copies of the original documents to be designated as verification exhibits and that to the extent any of those original documents appeared faded or difficult to read, the copy of such document also was faded or difficult to read. Moreover, the respondents maintain that they provided translations as requested by the Department and that the translations were sufficient for the Department to verify their data. Furthermore, the respondents point out that the verification reports provided no indication that they failed to provide adequate translations for the relevant sections of the original documents, nor do the verification reports suggest that any respondent was not fully prepared for verification. Finally, the respondents argue that if the petitioner had concerns about the quality of the copies of the verification exhibits, it was incumbent on the petitioner to raise such concerns earlier in the proceeding and in writing. Having served the

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[8] See the Department's April 26, 2002, verification report for Laizhou Luyuan at pages 7-8, and the Department's May 2, 2002, verification report for Shenyang Honbase at pages 6-7.

[9] Exhibit A of the petitioner's case brief cites to each instance where a page contained in a specific verification exhibit was either not translated or illegible.

verification exhibits on the petitioner during the period March 2002 through April 2002, the respondents argue that the petitioner waited over seven weeks before voicing its complaints about the verification exhibits. The respondents also point out that if the petitioner had issues with certain pages contained in specific verification exhibits then it should have submitted its complaints within ten days of their filing in accordance with 19 CFR 351.301(c)(1) of the Department's regulations.

Department's Position:

We find that the petitioner's argument is without merit and that the information in the verification exhibits supports the claims made by the respondents in this review. First, as a practical matter, we note that the petitioner had ample opportunity after receiving the verification exhibits and prior to receiving the verification reports and/or filing its case brief to notify the Department in writing concerning any problem it may have had with certain pages of any verification exhibit being insufficiently translated and/or illegible. The fact that the petitioner elected not to raise its grievance until it filed its case brief prevented the Department from promptly addressing and/or resolving the matter by showing the petitioner our copy of the exhibits taken from each company's verification.

Second, with respect to the petitioner's argument that certain pages are not legible or translated, we note that the petitioner fails to mention that there are numerous pages contained in those same verification exhibits which are translated. In numerous instances, the page at issue appears more than once in the same verification exhibit and was translated to the Department's satisfaction for purposes of examining the relevant data. In other instances, the same type of document appearing as one page of a particular exhibit was translated and/or legible in another verification exhibit. Finally, other instances involved situations in which data on the page at issue was fully explained through the other tracing documents contained in the same exhibit (see October 21, 2002, memorandum to the file for further details). Having reviewed each page included in those exhibits at verification, we find that there is nothing problematic on any of the verification exhibit pages mentioned in the petitioner's case brief. Based on our verification findings, we are satisfied that the exhibits taken from each verification support a finding that each respondent to which the exhibits relate did not export and/or sell subject merchandise during the POR.

Comment 6: Whether the Change in Ownership Warrants Assigning Laizhou Luyuan the PRC -Wide Rate

The petitioner argues that the change in Laizhou Luyuan's ownership is sufficient for the Department to find that Laizhou Luyuan's new owner has the potential to manipulate Laizhou Luyuan's pricing or export decisions. Therefore, the petitioner contends that Laizhou Luyuan should be retroactively assigned the PRC-wide rate for all its liquidated and unliquidated entries which entered the United States prior to the date of that ownership change.

As the basis for its argument, the petitioner maintains that when the Department granted a

separate rate to Laizhou Luyuan in the less-than-fair-value ("LTFV") proceeding, it did so based on the its ownership information. However, because the ownership in Laizhou Luyuan has changed since the LTFV proceeding, the petitioner claims that this company no longer deserves a separate rate. Hence, since the new owner in Laizhou Luyuan has never been individually investigated by the Department and has never received a de minimis or zero rate, the petitioner argues that Laizhou Luyuan should now be considered part of the NME entity and therefore subject to the PRC-wide rate. In support of its argument, the petitioner cites to Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 30688, 30691 (June 7, 2001) ("DRAMs from Korea"). The petitioner maintains that the facts in DRAMs from Korea are analogous with the facts regarding Laizhou Luyuan in that Laizhou Luyuan's new owner has taken over formal management of Laizhou Luyuan's business operations by purchasing a majority of its shares, and thus now has explicit control over its pricing and marketing. Moreover, like the situation in DRAMs from Korea, the petitioner alleges that there is now sufficient overlap in the board of directors such that there is a significant potential for the new owner in Laizhou Luyuan to manipulate the prices and production of Laizhou Luyuan.

In addition, the petitioner argues that the facts presented in this case indicate that the new owner is circumventing the order through its ownership of Laizhou Luyuan, and that Laizhou Luyuan is also circumventing the order by allowing its new owner to take advantage of its zero rate. Specifically, the petitioner maintains that the new owner's previous failed attempt in requesting a new shipper review followed by the merger with a company included in an exporter producer combination currently excluded from the antidumping duty order is clear evidence of its intent to circumvent the antidumping duty laws. Furthermore, the petitioner argues that Laizhou Luyuan did not voluntarily report its change of ownership to the Department until after it was uncovered by the petitioner. The petitioner maintains that the change in ownership in this case is significant enough that Laizhou Luyuan should have voluntarily disclosed the pertinent information on its own and that Laizhou Luyuan's failure to voluntarily disclose the information should be viewed as an attempt to impede the antidumping proceeding under section 776(a)(2) of the Trade Act of 1930.

Laizhou Luyuan states that it has abided by the conditions under which it is currently excluded from the antidumping duty order.[10] Moreover, Laizhou Luyuan contends that the petitioner's allegation that Laizhou Luyuan and its new investor are circumventing the order is without basis in fact or law, and that circumvention would occur only if Laizhou Luyuan exported to the U.S. market brake rotors manufactured by a producer other than itself or Shenyang Honbase. Moreover, Laizhou Luyuan states that the petitioner has failed to offer any evidence or even plausible theory of how the new investor without any production of subject merchandise of its

[10] Laizhou Luyuan is excluded from the order on brake rotors only with respect to (1) self-produced brake rotors it sold directly to the United States; (2) brake rotors which it produced and then sold to Shenyang Honbase Machinery Co., Ltd. ("Shenyang Honbase"); and (3) brake rotors it sold to the United States which were produced by Shenyang Honbase.

own would circumvent the antidumping duty order. Therefore, Laizhou Luyuan argues that the Department should affirm its decision in the preliminary results to rescind this review with respect to it. Furthermore, Laizhou Luyuan maintains that the Department based it preliminary results on a finding that the change of ownership in Laizhou Luyuan had not significantly changed its management, production facilities, supplier relationships, or customer base, and that these findings were confirmed through the Department's verification of its data and the new investor's data. Therefore, Laizhou Luyuan maintains that the evidence on the record demonstrates that it remained the same entity before and after the sale of some of its shares to the new investor, and that the business scope and operations of the new investor and Laizhou Luyuan are distinct and do not undermine Laizhou Luyuan's compliance with the conditions under which it is currently excluded from the antidumping duty order. To support its position that it has complied with the conditions under which it is currently excluded from the order, Laizhou Luyuan asserts that it has now participated in two completed administrative reviews, and in each review the Department determined that it complied with the terms of its exclusion conditions. Therefore, Laizhou Luyuan maintains that its past and present selling practices demonstrate that it has adhered and will continue to adhere to its exclusion conditions.

Department's Position:

We disagree that the change in Laizhou Luyuan's ownership warrants assigning that company the PRC-wide rate in this review. Although it is correct that Laizhou Luyuan's original owner during the LTFV proceeding has since sold a significant portion of Laizhou Luyuan to a new investor, we find based on the data contained in this record that Laizhou Luyuan's original owner still controls and manages the daily operations of Laizhou Luyuan and does not involve the new investor in its pricing or business strategy. Documentation from verification clearly demonstrates that Laizhou Luyuan's management is accountable to only Laizhou Luyuan's original owner even though he retains only a minority interest in Laizhou Luyuan. In addition, documentation and statements from verification support the conclusion that Laizhou Luyuan's new owner acts only as an investor in Laizhou Luyuan and has refrained from interfering in management decisions which are still being made by the original owner of Laizhou Luyuan (see "corporate structure, ownership and affiliation" section of the April 26, 2002, Laizhou Luyuan verification report for further details). Therefore, unlike the situation in DRAMs from Korea, we find based on our verification results that the new investor has not exhibited any operational control of any kind over Laizhou Luyuan's pricing and/or marketing decisions. Also, although there are three members on Laizhou Luyuan's board of directors who were nominated by the new investor, we found no evidence based on the documentation examined at verification that these board members have any role in the management decisions made at Laizhou Luyuan or that the board has ever convened for purposes of developing business plans and/or strategic business goals for Laizhou Luyuan. In addition to the insignificant impact of the ownership change on management, we also note that Laizhou Luyuan has not significantly changed its (1) management, (2) production facilities, (3) supplier relationships, or (4) customer base as a result of its purchase by the other company (see pages 12 through 14 of the Laizhou Luyuan verification report). Therefore, we find no basis to conclude that there is a significant potential

for Laizhou Luyuan's new investor to manipulate export prices and/or production of Laizhou Luyuan.

With respect to the petitioner's contention that the change in ownership requires the Department to re-examine whether Laizhou Luyuan qualifies for a separate rate, we disagree. Because its change in ownership has not affected export and/or production decisions which are still being made by Laizhou Luyuan's original owner, we find no basis on the record of this review to consider Laizhou Luyuan to be subject to the order simply because of the change in its ownership since the LTFV proceeding.

Moreover, contrary to the petitioner's assertions, we find no evidence based on an examination of the new owner's and Laizhou Luyuan's sales and accounting records that either the new investor or Laizhou Luyuan is circumventing the order. Based on our verification findings, the new investor is not a producer of brake rotors and has never sold brake rotors to the U.S. market. We also find based on our verification findings that Laizhou Luyuan only sold brake rotors to the U.S. market during the POR which it produced. As discussed in the October 21, 2002, memorandum cited in Comment 3 above, one entry selected from our query of the Customs database seemed to indicate initially that the new investor made at least one sale of brake rotors during the POR which were produced by Laizhou Luyuan and which were resold by its Canadian customer to a U.S. importer. However, after examination of both the new investor's and Laizhou Luyuan's sales records, we find no evidence that the brake rotor models included in that U.S. entry were produced by Laizhou Luyuan or even sold by the new investor to the Canadian reseller (see Laizhou Luyuan verification report at pages 9 through 11). Therefore, the data on this record indicates that neither the new investor nor Laizhou Luyuan is circumventing the order.

Comment 7: Whether We Should Have Conducted Verification of Gren's Data

In response to a January 14, 2002, letter filed by the petitioner in which it renewed its request that the Department conduct verification of Gren, we informed the petitioner that we were not going to verify Gren's response because (1) a verification of Gren's data was not statutorily required; (2) the petitioner did not sufficiently demonstrate that good cause existed to verify Gren's data; and (3) in the absence of good cause, the Department's team assigned to this case did not have the resources to verify any additional companies other than those companies it had already selected for verification.[11]

The petitioner argues that the Department's decision not to verify Gren constitutes an abuse of discretion by the Department and should be reconsidered. The petitioner sets forth several reasons why there is good cause to verify Gren's data in this review. Specifically, the petitioner

[11] See Memorandum dated January 24, 2002, from Irene Darzenta Tzafolias, Program Manager, to the File ("January 24, 2002, memorandum").

states that in the last two reviews conducted on Gren's entries[12], the Department did not verify Gren's data even though Gren's antidumping duty rate changed from 0.69 percent to a rate of de minimis. The petitioner contends that verification of Gren's data in this review is necessary to ensure that the information submitted in Gren's questionnaire responses is accurate particularly because Gren has exported large quantities of brake rotors to the United States since it was last verified by the Department. Because this company now has a de minimis rate, the petitioner argues that the Department should not be relying on unverified statements to calculate a separate rate for Gren in the final results of this review. In addition to an increase in Gren's exports of subject merchandise to the U.S. market, the petitioner contends that changes in its ownership, organizational structure, product-mix, and production facilities also provide reasons for the Department to find good cause to conduct verification of Gren's data. In support of its argument, the petitioner cites the Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy, 65 FR 77852 (December 13, 2000)(Comment 8)("Certain Pasta from Italy").

With respect to a lack of resources mentioned in the Department's January 24, 2002, memorandum as a reason for not verifying Gren, the petitioner maintains that the importance of verifying Gren's data overrides this Departmental constraint. In support of its argument, the petitioner cites Al Tech Speciality Steel Corp. v. United States, 745 F. 2d 632, 640 (Fed. Cir. 1984)("Al Tech Speciality Steel Corp"). Moreover, the petitioner argues that the Department had conducted verification of other companies in this review which were located in the same PRC province as Gren. Therefore, the petitioner contends that the cost in travel and in human resources to verify Gren should have been marginal.

Gren argues that the Department's decision not to verify its data was in accordance with the Department's regulations and well within the Department's discretion and that the Department explained its decision not to verify Gren in its January 24, 2002, memorandum. Gren further contends that the Department's regulations require verification only in specified situations. Since the Department had verified Gren during one of the preceding two reviews in which it was a respondent, Gren maintains that the Department was not required to conduct verification of its data. Furthermore, Gren contends that the fact that the Department finds insufficient cause to warrant verification of its data in this review is within the Department's discretion as established under Department practice and upheld in judicial decisions. In support of its argument, Gren cites the Federal Circuit's decision in Torrington v. United States.

Gren further contends that the petitioner's reliance on Certain Pasta from Italy is misplaced and misconstrues the Department's finding of good cause in that proceeding. In particular, Gren

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[12] Gren was a respondent in the second and third administrative reviews. The second administrative review covered entries during the period April 1, 1998 through March 31, 1999, and the third administrative review covered entries during the period April 1, 1999 through March 31, 2000. Gren was previously a respondent in the first new shipper review which covered entries during the period April 1, 1997, through September 30, 1997. In that review, the Department conducted verification of Gren's data.

maintains that the respondent in that proceeding underwent significant changes in its organization and revised its data on numerous occasions throughout the proceeding. In this review, Gren states that there have been no significant changes in its organizational structure, nor have there been numerous revisions made to its submitted data. Therefore, Gren maintains that the Department should reject the petitioner's argument about the necessity of verifying its data.

Department's Position:

We disagree that verification of Gren's questionnaire responses was necessary in this review. In accordance with section 782(i)(3) of the Act, the Department is only required to conduct verification of a respondent's data in an administrative review if there is a timely request from the petitioner and no verification has been conducted of that respondent's data during either of the two immediately preceding administrative reviews, except if good cause for verification is shown. We conducted verification of Gren's data in the first new shipper review, the POR of which spanned from April through September 1997. Subsequently, Gren participated in its first administrative review, the POR of which spanned from April 1998 through March 1999. This instant review marks Gren's second administrative review. Therefore, verification of Gren's data in this review is not statutorily required unless good cause is shown.

Although petitioner claims that good cause does exist to verify Gren's data in this review, we find that the petitioner's basis for making this claim is without merit for the reasons mentioned below.

The petitioner's "good cause" argument for verifying Gren's data in this review relies primarily on the fact that Gren's margin fell from 0.69 percent in its first administrative review to a preliminary de minimis rate in the current review. The fact that a respondent's margin changes in one review from another review is not per se a sufficient basis for questioning the accuracy of the data submitted by a respondent for purposes of calculating its margin and does not constitute good cause for verification.

With regard to the petitioner's second reason for arguing that good cause exists in this review (i.e., changes that may have occurred in Gren's ownership, organizational structure, product-mix, and production facilities since it was a respondent in the new shipper review), the Department finds that such changes are not unusual over time. Moreover, an analysis of the data contained in Gren's questionnaire responses clearly demonstrates that the changes with respect to its ownership, organizational structure, product-mix and production facilities are minor in nature. Therefore, these minor changes do not provide a sufficient basis for conducting verification of a company's data. Moreover, in examining Gren's data submitted on the record of this review, we do not find any noteworthy discrepancies with or any major revisions to the pricing and factor data it submitted in response to the original and supplemental antidumping duty questionnaires. As a result, we find that the situation which existed in Certain Pasta from Italy is not relevant in this case. Therefore, we continue to find that good cause has not been demonstrated in this review with respect to the need to verify Gren's data.

Finally, with respect to the petitioner's contention that the Department would have expended only a minimal amount of extra resources if it had conducted verification of Gren's data, we maintain that if good cause had been demonstrated in this review to verify Gren's data, the Department would have reconsidered its decision not to verify Gren's data despite any resource constraint.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margin for the reviewed firm in the Federal Register.

Agree____ Disagree____

_____
Faryar Shirzad
Assistant Secretary
for Import Administration

_____
(Date)